



BEFORE THE FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D. C. 20554

In the Matter of Applications of)	WT DOCKET NO. 02-179
)	
RESORT AVIATION SERVICES, INC.)	
)	
For Renewal of Aeronautical Advisory)	MEMORANDUM OF RESORT AVIATION
Station WYT9, Coeur d'Alene Airport,)	SERVICES, INC. IN OPPOSITION TO
Hayden, Idaho)	MOTION TO SUPPRESS
)	
and)	
)	
KOOTENAI COUNTY COEUR)	
D'ALENE AIRPORT)	
)	
For a New Aeronautical Advisory)	
Station at Coeur d'Alene Airport,)	
Hayden, Idaho)	

Counsel for Kootenai County Coeur d'Alene Airport (Kootenai County) stipulated to the taking of the depositions of Greg Delavan and Phillip Cummings and the stipulation with requisite copies was sent to Marlene Dortch on November 12, 2002. By agreement of counsel, the deposition date was moved to December 5, 2002, one day before the cutoff date for discovery.

Kootenai County has filed a motion to suppress the depositions asserting the right of 30 days to review the depositions as provided by Federal Rules of Civil Procedure 30(e). Although FRCiv.P 32(d) is

MEMORANDUM IN OPPOSITION TO
MOTION TO SUPPRESS

cited, no objections are made asserting error or irregularities with taking of the depositions or objecting to the certification of the officer taking the depositions.

Most significantly, the motion to suppress is not accompanied by any assertion by counsel nor by those deposed that the transcripts are incorrect or that there should be change in form or substance even though Kootenai County has had copies of the depositions since the same were delivered on December 18, 2002. The objection is purely technical.

Rule 30(e) was last amended in 1993 to reduce the difficulty reporters had encountered in obtaining signatures. Vol 8A, Wright-Miller-Marcos, *FEDERAL PRACTICE AND PROCEDURE*, p. 23.

Rule 30(f) requires a Certification by the officer taking the deposition. With this memorandum, copies of the certification are submitted. There is no indication in the text of *FEDERAL PRACTICE AND PROCEDURE* relating to Rule 30(e) and (f) that places any limitation upon the use of a deposition prior to the expiration of the 30 days for examination. Vol 8A, Wright-Miller-Marcos, *FEDERAL PRACTICE AND PROCEDURE*, §2118 and §2119, pp 132-141.

The appended annotations to the discussions of Rule 30(e) in the 2002 Pocket Part note a Second Circuit decision holding that the original answers remain part of the record and can be read at trial. *Podell v. Citicorp Diners Club, Inc.*, 112 F.3rd 98 (2nd Cir 1997). Two other cited cases admonish that a party cannot rewrite portions of his deposition after a summary judgment has been filed. *Wiley v. Brown*, 164 F.R.D. 547 (D.C. Kan 1996). *Rios v. Welch*, 856 F. Supp 1499, 1502 (D.C. Kan. 1994). Vol 8A Wright-Miller-Marcos, FEDERAL PRACTICE AND PROCEDURE, 2002 Pocket Part, p. 25.

In the conference call with the Court held on August 13, 2002, counsel were advised that these proceedings were not governed by the Federal Rules of Civil Procedure:

MR. CAFFERTY: This is John Cafferty, Your Honor.
I just have one question for clarification.

All of the procedural rules are governed by the specific FCC Rules, and the Federal Rules of Civil Procedure then would not apply to this proceeding?

JUDGE STEINBERG: Correct. Right. We do not use the Federal Rules of Civil Procedure at all. Although if the Commission's Rules do not provide for something, I might go to them as guidance, but I am not, I am not bound by that.

Transcript prepared by Heritage Reporting Corporation, p. 13, L. 22-25; p. 14, L. 1-6.

47 CFR §1.318(e) provides for examination of the deposition by the witness, changes and signing but says nothing about time limits nor any prohibition against use after the transcript is published. 47 CFR §1.351 relates to rules of evidence in trial and gives more discretion to the Administrative Judge:

Sec 1.351 Rules of Evidence

...Such rules may be relaxed if the ends of justice will be better served by so doing.

Kootenai County has not asserted that anything in the excerpts from the depositions is an inaccurate transcription. The motion to suppress is only a delaying ploy. The motion to suppress should be denied.

Respectfully submitted the
7th day of January, 2003.



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I hereby certify that a true and exact copy of the foregoing was sent by Fax on the 7th day of January, 2003, to:

ADMINISTRATIVE LAW JUDGE
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